IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WA.No. 4078 of 2001(C)

AGAINST THE JUDGEMENT IN OP.13243/1997
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APPELLANT: R4

S. RAJENDRAN, ASSISTANT PROFESSOR
DEPARTMENT OF ELECTRICAL ENGINEERING,
T.K.M. COLLEGE OF ENGINEERING, KOLLAM
NOW WORKING AS PROFESSOR IN COMPUTER
SCIENCE AND ENGINEERING, T.K.M. COLLEGE
OF ENGINEERING, KOLLAM

BY ADV. S.RAJENDRAN(PARTY IN PERSON)

RESPONDENTS: PETITIONER & R1 TO R3 R5 AND R6
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1. M.K. SULAIMAN, ASSISTANT PROFESSOR
   DEPARTMENT OF COMPUTER SCIENCE AND ENGINEERING
   T.K.M. COLLEGE OF ENGINEERING, KOLLAM
2. UNIVERSITY OF KERALA, REPRESENTED BY ITS
   REGISTRAR, TRIVANDRUM
3. THE REGISTRAR, UNIVERSITY OF KERALA
   TRIVANDRUM
4. THE CHAIRMAN, GOVERNING BODY,
   T.K.M. COLLEGE OF ENGINEERING,KOLLAM
5. THE DIRECTOR OF TECHNICAL EDUCATION
   THIRUVANANTHAPURAM
6. V. AJAYAKUMAR, AGED 41 YEARS, S/o VASUDEVAN
   ASSISTANT PROFESSOR OF COMPUTER SCIENCE AND
   ENGINEERING, T.K.M. COLLEGE OF ENGINEERING
   KOLLAM

R5 BY GOVT PLEADER SRI SANDESH RAJA
BY ADV. SRI.P. RAVINDRAN
R2 AND R3 BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.P.K.IBRAHIM
SRI.HARUN-AL-RASHID

SRI.ALEXANDER THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19/06/2007, ALONG WITH 208 OF 2002 WA NO. 351 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

W.A. No. 4078 of 2001
& W.A. Nos. 351 and 208 of 2002

Dated: 19th June 2007

JUDGMENT

Radhakrishnan,J.

Party in-person appeared in all these appeals.

2. W.A.No 4078 of 2001 arises out of the judgment in O.P. No 13243 of 1997 and W.A. No 351 of 2002 arises out of the judgment in O.P.No 15920 of 1994 and W.A. No 208 of 2002 arises out of the judgment in O.P.No 14283 of 1996. All the writ petitions were disposed of by the learned single judge by a common judgment dated 6.12.2001.

3. O.P.No 13243 of 1997 was filed by one Sulaiman, in which appellant herein was the fourth respondent. O.P.No 15920 of 1994 was filed by the Chairman and Governing Body of the Engineering College along with its Principal and O.P.No 14283 of 1996 was also preferred by Sulaiman, the petitioner in O.P. No 13243 of 1997. In all the writ petitions, the main challenge was against the order

passed by the Registrar of the University based on the Syndicate decision declaring that one post of Assistant Professor in Computer Science and Engineering be deemed to be retained against the retirement vacancy of M.A.Mathew in the Electrical Engineering Department from 1.4.1993 till the date on which appellant S. Rajendran assumes charge as Professor in Computer Science and Engineering and also for a direction holding that the post of Assistant Professor in Computer Science and Engineering be treated against the vacant post of Professor in MCA Department from the date on which S. Rajendran assumes charge as Professor in the Computer Science Department. Consequent to the order passed by the Registrar and consequent on the direction given by the University, the Management issued an order dated 15.02.1997 to the effect that S. Rajendran, Assistant Professor of Electrical Engineering Department would be deemed to be transferred and appointed as Assistant Professor in the Computer Science and Engineering Department with effectfrom 3.7.1986 and deemed to be appointed as Professor with effect from 9.1.1987. It was also ordered that one post of Assistant Professor in Computer Science and Engineering would be deemed to have have been retained

vacant against the retirement vacancy of M.A. Mathew in Computer Science and Engineering Department with effect from 1.4.1993 till the date on which S. Rajendran assumes charge as Professor in the Computer Science and Engineering Department. It was also ordered that the post of Assistant Professor in the Computer Science and Engineering Department would be treated against the vacant post of Professor in MCA Department from the date on which S. Rajendran assumes charge as Professor in the Computer Science Department and the pay of S. Rajendran will be fixed notionally and financial benefits would be given from the date of assumption of charge.

4. Appellant has already retired from service after holding the post of Assistant Professor in Computer Science and also the post of Professor and he received all the benefits attached to those posts. Further Rajendran and the petitioner herein have already attained superannuation and therefore the question of their occupying the post of Assistant Professor with effect fom 3.7.1986 or the post of Professor with effect from 9.1.1987 would not arise. In the University order as well as the order passed by the Management it has been specifically stated that the pay of S. Rajendran would be

fixed notionally and financial benefits would be given from the date of assumption of charge. S. Rajendran however claims financial benefits attached to the post of Assistant Professor with effect from 3.7.1986 and that of the Professor with effect from 9.1.1987. Rajendran, it may be noted, had not challenged either the order passed by the Syndicate or that of the Management before this court or before any other forum and therefore in the writ petition filed by the Management and Sulaiman no relief could be granted to Rajendran. On merits also we find no reason to take a different view from that of the learned single judge.

5. Learned single judge has rightly found that Ext P1 judgment of the Division Bench in O.P. No 7589 of 1988 is a complete answer to many of the contentions raised by the appellant before us. It has been specifically stated in paragraph 7 of the judgment of the Division Bench that Rajendran could not claim the post of Assistant Professor created by G.O.(Ms) 60/86 datd 14.3.1986 and G.O.(Ms) No 61/88 dated 17.3.1988 and that he had not put forward any right to claim the post of Assistant Professor in Computer Science and Engineering on the basis of the rank obtained by him in the list dated 1.9.1987. The Division Bench in paragraph 9 of the judgment had

also noticed that on 3.10.1988 Sulaiman was promoted to the post of Assistant Professor in Computer Science and Engineerin. Though Rajendran had raised a contention that he was not qualified to be appointed as Assistant Professor on 3.10.1988, Rajendran had put forward claim for the post of Assistant Professor only after the expiry of the select list prepared by the Committee. It was also noticed that he was not in the feeder category of teachers in Computer Science and Engineering for promotion to the post of Assistant Professor. With regard to the claim of Rajendran to the post of Assistant Professor in Computer Science, judgment of the Division Bench is a complete answer and he cannot resurrect such claims in these proceedings. The Division Bench however disposed of the matter without examining the claim of Rajendran for the post of Assistant Professor and without expressing any opinion with regard to his entitlement. It is at this juncture Syndicate has passed an order holding that Rajendran is enttled to be appointed as Professor and it was also ordered that approval of appointment of Sulaiman in the department of Computer Science would be considered only after the appointment of Rajendran. Rajendran was then appointed by the Management on the strength of that order and therefore there is

no justification in not approving appointment of Sulaiman. Now that Rajendran has already retired from service we are not prepared to say that Rajendran is entitled to get additional benefits attached to the post of Assistant Professor or that of Professor with effect from 9.1.1987.

6. We are informed that Rajendran has already been given the benefits of Professor on his assumption of charge. In such circumstances we find no illegality in the view taken by the learned single judge. Appeals lack merits and are accordingly dismissed.

Sd/-

K.S.RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

19/06/2007
en/

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